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09/907,008	07/16/2001	Kenneth H. Abbott	294438008US5	8058

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PERKINS COIE LLP
PATENT-SEA
P.O. BOX 1247
SEATTLE, WA 98111-1247

EXAMINER

HAILU, TADESSE

ART UNIT	PAPER NUMBER
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2173

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/907,008	Applicant(s) ABBOTT ET AL.	
	Examiner Tadesse Hailu	Art Unit 2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 134-204 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 134 and 150-204 is/are rejected.
- 7) ☐ Claim(s) 135-149 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/15/02, 12/20/02</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This Office Action is in response to the patent application number 09/907,008 filed on July 16, 2001.
2. The current patent application claims priority from US Application 09/216,193 filed December 18, 1998, now patent number 6,466,232.
3. The Information Disclosure Statements submitted on 7/15/02 and 12/20/02 are considered and entered into the file.
4. The pending claims 134-204 are examined herein as follows.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claim 134 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being

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unpatentable over claim 134 of copending Application No.

09/907,029 in view of Straub et al (US Pat No 6,091,411).

The copending application discloses all of the limitations of the instant application except for "for each of the obtained themes, customizing the obtained theme" (see below). Straub discloses a method and system for dynamically updating or customizing themes (column 3, lines 13-25). Straub and copending application are analogous art because they are from the same field of endeavor, which is information presentation. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the theme updating of Straub with theme of copending application.

The suggestion/motivation for doing so would have been to provide customized themed enhancements to the client application (GUI) (Straub, column 3, lines 45-59).

This is a provisional obviousness-type double patenting rejection.

Instant application

copending application 09/907,029

134. (New) A method in a wearable computing device for customizing one or more obtained defined themes used to present information to users, a current context of a user of the	134. (New) A method in a wearable computing device for exchanging one or more defined themes used to present information to users a current context of a user of the wearable computing
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wearable computing device being represented by a plurality of context attributes that each model an aspect of the context, each of the defined themes modeling a distinct contextual situation of the user that has multiple contextual aspects and each having associated information to be presented to the user when the modeled contextual situation of the theme matches a current contextual situation of the user, the modeling of a contextual situation by specifying multiple context attributes and by specifying one or more possible values associated with each of the specified context attributes, comprising:	device being represented by a plurality of context attributes that each model an aspect of the context, each of the defined themes modeling a distinct contextual situation of the user that has multiple contextual aspects and each having associated information to be presented to the user when the modeled contextual situation of the theme matches a current contextual situation of the user, the modeling of a contextual situation by specifying multiple context attributes and by specifying one or more possible values associated with each of the specified context attributes, comprising:
receiving an indication of a current contextual situation of the user of the wearable computing device that includes current values for at least some of the plurality of context attributes;	receiving an indication of a current contextual situation of the user of the wearable computing device that includes current values for at least some of the plurality of context attributes;
receiving an indication of another computing device having access to one	receiving an indication of another computing device having access to one

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or more defined themes;	or more defined themes;
obtaining at least one of the accessible defined themes from the another computing device;	obtaining at least one of the accessible defined themes from the another computing device
<u>for each of the obtained themes,</u> <u>customizing the obtained theme</u> and storing the customized theme so as to be available for use in presenting information to the user of the wearable computing device;	and storing the obtained themes so as to be available for use in presenting information to the user of the wearable computing device;
determining that one of the available defined themes models the current contextual situation such that the received current value for each of the context attributes specified for that one theme matches one of the specified possible values associated with that context attribute;	determining that one of the available defined themes models the current contextual situation such that the received current value for each, of the context attribute specified for that one theme matches one of the specified possible values associated with that context attribute;
And presenting to the user the information that is associated with the one defined theme, so that the user receives information that is appropriate to a contextual situation in which the user is situated.	And presenting to the user the information that is associated with the one defined theme, so that the user receives information that is appropriate to a contextual situation in which the user is situated.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 150-204 are rejected under 35 U.S.C. 102(e) as being anticipated by Burkey et al (US Pat No. 6,446,076).

With regard to claim 150:

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Burkey discloses a method in a computing device for receiving persona (themes) (Fig. 12) representing contextual situations (Work, Office and Vacation (e.g., lake Tahoe)) and customizing the received themes for use in providing appropriate responses to the represented contextual situations (column 30, lines 52-67, column 34, lines 21-35).

The method of Burkey discloses receiving at least one theme (e.g. work, office or vacation persona) from an external source (server 1720, Fig. 17), each of the received themes representing a contextual situation and associated with a type of response that is appropriate to the represented contextual situation (column 31, lines 1-48).

The method of Burkey also discloses customizing at least one of the received themes to reflect the computing device (column 34, lines 21-35).

The method of Burkey also discloses receiving an indication of a current contextual situation (column 33, lines 33-53).

The method of Burkey also discloses determining that one of the received themes represents the current contextual situation (column 31, lines 1-48).

The method of Burkey further discloses providing the type of response that is associated with the one persona (theme) (column 31, lines 1-48).

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With regard to claim 151:

Burkey further discloses the one persona (theme) is one of the customized themes (column 32, lines 4-25, column 34, lines 21-35).

With regard to claim 152:

Burkey further discloses the representing of a contextual situation by a theme is with multiple context attributes (e.g., email, news, travel, etc, column 30, lines 34-50, Fig. 12) related to that contextual situation (work, office and vacation) and with criteria (or rule) for determining values of those context attributes that match (using pattern matching) that contextual situation (column 27, lines 10-27), wherein the current contextual situation includes multiple context attribute values (email, news, travel, etc, column 30, lines 34-50), and wherein the determining that the one theme represents the current contextual situation is based on the included values (column 30, lines 34-50) of the current contextual situation containing values for the context attributes of the one theme that the criteria of the one theme determines to be matching values (column 30, lines 52-67, column 31, lines 1-48, column 32, lines 50).

With regard to claim 153:

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Burkey further discloses the customizing of the received themes is based on explicit indications received from a user of the computing device (column 30, lines 53-67).

With regard to claim 154:

Burkey further discloses the customizing of the received themes is based on previously specified preferences for a user of the computing device (column 34, lines 21-35, column 38, lines 36-44).

With regard to claim 155:

Burkey further discloses the customizing of the received themes is based on likely preferences of a user of the computing device that are determined without intervention by the user (column 34, lines 21-35, column 38, lines 36-64).

With regard to claim 156:

Burkey further discloses that after the determining of the likely preferences and before the customizing of the received theme, receiving explicit user approval of the customizing (column 29, lines 7-23, column 31, lines 29-48).

With regard to claim 157:

Burkey further discloses monitoring actions of the user in order to learn the likely user preferences (column 38, lines 17-34).

With regard to claim 158:

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Burkey further discloses the customizing of the received themes is to specialize the received themes to a user of the computing device (column 34, lines 21-35).

With regard to claim 159:

Burkey further discloses the customizing of the received themes is to specialize the received themes to the computing device (column 34, lines 21-35).

With regard to claim 160:

Burkey further discloses the customizing of the received themes is to modify the types of response that are associated with the received themes (column 38, lines 46-64).

With regard to claim 161:

Burkey further discloses the customizing of the received themes is to modify the contextual situations represented by the received themes (column 38, lines 46-64).

With regard to claim 162:

Burkey further discloses the receiving of one of the persona (themes) (e.g., work, office or vacation persona) includes receiving at least one context attribute that is specified by that one theme (e.g. email, news, travel context attribute or variables), a context server module (server 1720) able to provide values for one or more context attributes specified by that one persona (theme) and/or a context client

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module (client 1740) capable of producing responses appropriate to the contextual situation represented by that one persona (theme), and wherein the customizing of that received theme includes customizing one of the received context attributes, the received context server module (server 1720), or the received context client module (client 1740, Fig. 17) (column 33, lines 33-53).

With regard to claim 163:

Burkey further discloses the receiving of one of the themes includes receiving an associated theme layout that specifies information appropriate to the contextual situation represented by that theme and that specifies a manner of presenting the specified information, and wherein the customizing of that received theme includes customizing the associated theme layout (column 30, lines 7-33, 52-67, column 31, lines 1-28, column 33, lines 33-53).

With regard to claim 164:

Burkey further discloses determining that the provided type of response associated with the one theme is inappropriate for the current contextual situation, and customizing the one theme based on the determining (column 31, lines 1-48, column 33, lines 33-53).

With regard to claim 165:

Burkey further discloses the determining is based on a received user indication (column 30, lines 52-67, column 31, lines 1-48).

With regard to claim 166:

Burkey further discloses receiving an indication of a new contextual situation, determining that no available theme represents the new contextual situation, and customizing one of the available themes based on the determining (column 33, lines 33-53).

With regard to claim 167:

Burkey further discloses the provided type of response includes presenting information to a user of the computing device that is appropriate to the current contextual situation (column 36, lines 35-40, column 36, lines 62-column 37, lines 5, column 38, lines 3-22).

With regard to claim 168:

Burkey further discloses the customizing of one of the received themes is in such a manner that the associated type of response for the customized theme includes presenting information specific to a user of the computing device (column 36, lines 35-40, column 36, lines 62-column 37, lines 5, column 38, lines 3-22).

With regard to claim 169:

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Burkey further discloses the contextual situations represented by the received themes are activities of a user of the computing device (column 38, lines 17-34).

With regard to claim 170:

Burkey further discloses that one of the represented contextual situations relates to a situation of a user of the computing device (column 36, lines 35-40, column 36, lines 62-column 37, lines 5, column 38, lines 3-22).

With regard to claim 171:

Burkey further discloses the one represented contextual situation reflects a modeled mental state of the user (column 32, lines 28-36).

With regard to claim 172:

Burkey further discloses one of the represented contextual situations relates to a situation of the computing device (column 33, lines 33-53).

With regard to claim 173:

Burkey further discloses at least one of the represented contextual situations relates to a physical environment (column 36, lines 61-column 37, lines 4, column 4, lines 37-45).

With regard to claim 174:

Burkey further discloses at least one of the represented contextual situations relates to a cyber-environment of a user

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of the computing device (column 32, lines 28-49, column 38, lines 17-34).

With regard to claim 175:

Burkey further discloses at least one of the received themes includes permission information that specifies how that theme can be customized, and wherein the customizing of that theme is performed in accordance with that permission information (column 29, lines 7-23, column 31, lines 29-48).

With regard to claim 176:

Burkey further discloses the permission information specifies that the theme cannot be modified, and wherein the customizing of that theme in accordance with that permission information includes not customizing the theme (column 31, lines 29-48, column 33, lines 33-53).

With regard to claim 177:

Independent claim 177 corresponds generally to independent claim 150 and recites similar features in storage medium form, and therefore is rejected under the same rationale.

With regard to claim 178:

Burkey further discloses that the computer-readable medium is a data transmission medium transmitting a generated data signal containing the contents (column 49, lines 19-24).

With regard to claim 179:

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Burkey further discloses that the computer-readable medium is a memory of a computer system (column 3, lines 19-24).

With regard to claim 180:

Independent claim 180 corresponds generally to independent claim 150 and recites similar features in a computing device form, and therefore is rejected under the same rationale.

With regard to claim 181:

Burkey further discloses that the input component, the customizing component and the response provider component are executing in memory of the computing device (column 3, lines 26-52).

With regard to claim 182:

Burkey further discloses that the computing device is a wearable computer (column 36, lines 61-65).

With regard to claim 183:

Burkey discloses a computer system for receiving persona (themes) representing contextual situations (work, office and vacation, Fig. 12) and customizing the received themes for use in providing appropriate responses to the represented contextual situations (column 30, lines 52-67, column 34, lines 21-35).

Burkey discloses means for receiving at least one theme from an external source (column 33, lines 33-53), each of the received themes representing a contextual situation (e.g. work,

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office and vacation, Fig. 12) and associated with a type of response that is appropriate to the represented contextual situation (column 31, lines 1-28).

Burkey also discloses means for customizing at least one of the received themes in a manner specific to the computing device (column 34, lines 21-35, column 29, lines 1-5).

Burkey also discloses means for determining that one of the received themes represents a current contextual situation and providing the type of response that is associated with the one theme (column 31, lines 1-48, column 33, lines 19-32).

With regard to claim 184:

Burkey discloses a computer-implemented method (Figs. 17, and 25) for defining a default persona or theme (column 32, lines 4-26) and customizing that theme for use by a portable computing device in presenting information that is appropriate to a contextual situation represented by the theme (column 32, lines 4-26, column 33, lines 1-17).

The method of Burkey discloses defining a default theme representing a contextual situation by receiving a specification of the represented contextual situation (column 32, lines 4-26, column 33, lines 1-17).

The method of Burkey discloses defining a default theme representing a contextual situation by receiving one or more

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indications of information that is appropriate to the represented contextual situation (column 32, lines 4-26, column 33, lines 1-17).

The method of Burkey discloses defining a default theme representing a contextual situation by defining a theme based on the received indications that can be used by any of multiple computing devices to present the appropriate information when a current contextual situation matches the represented contextual situation (column 31, lines 1-28, column 32, lines 51-62).

Burkey further discloses customizing the defined default theme based on the portable computing device so that the portable computing device can use the customized theme to present the appropriate information in a manner specific to the portable computing device (column 29, lines 1-5, column 32, lines 4-26, column 33, lines 33-53).

With regard to claim 185:

Burkey further discloses distributing customized theme to the portable computing device (column 30, lines 7-33, column 38, lines 3-22).

With regard to claim 186:

Burkey further discloses customizing the defined default theme for each of multiple other computing devices such that

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each of the customized themes is distinct (column 32, lines 4-26, column 30, lines 52-67).

With regard to claim 187:

Burkey further discloses the received specification of the represented contextual situation includes one or more indications of multiple context attributes (email, news, travel, etc) that are related to the represented contextual situation (office, work and vacation) and of criteria (or rules) for determining values of the indicated context attributes that match the represented contextual situation (column 31, lines 1-48), and wherein the defined theme is determined to match (using pattern matching) a contextual situation when context information for that contextual situation includes values for the indicated context attributes that are determined by the indicated criteria to match the represented contextual situation (column 27, lines 10-27, column 30, lines 34-50, 52-67, column 31, lines 1-48).

With regard to claim 188:

Burkey further discloses the customizing of the defined theme is based on explicit indications received from a user of the portable computing device (column 33, lines 33-53).

With regard to claim 189:

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Burkey further discloses the customizing of the defined theme is based on likely preferences of a user of the portable computing device that are determined without intervention by the user (column 35, lines 33-38, column 36, lines 14-40).

With regard to claim 190:

Burkey further discloses that after the determining of the likely preferences and before the customizing of the received theme, receiving explicit user approval of the customizing (column 29, lines 7-12, column 31, lines 29-48).

With regard to claim 191:

Burkey further discloses the customizing of the defined theme is to specialize the defined theme to a user of the portable computing device (column 29, lines 7-23).

With regard to claim 192:

Burkey further discloses the customizing of the defined theme is to specialize the defined theme to the portable computing device (column 29, lines 7-23, column 33, lines 19-32).

With regard to claim 193:

Burkey further discloses the customizing of the defined theme is to modify the appropriate information for the defined theme (column 32, lines 4-26, column 34, lines 21-35).

With regard to claim 194:

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Burkey further discloses the customizing of the defined theme is to modify the contextual situation represented by the defined theme (column 31, lines 1-28, column 32, lines 4-26).

With regard to claim 195:

Burkey further discloses receiving an indication of a current contextual situation (column 33, lines 33-53). Burkey further discloses determining that a copy of the defined theme that has not been customized matches the current contextual situation (column 35, lines 24-29, column 36, lines 35-40). In response, Burkey further discloses presenting the indicated appropriate information for the defined theme (column 35, lines 16-29).

With regard to claim 196:

Burkey further discloses the defining of the theme includes associating a priority with the defined theme (column 47, lines 29-30), and wherein the customizing of the theme includes modifying the priority (abstract, column 40, lines 13-19).

With regard to claim 197:

Burkey further discloses the defining of the theme includes associating permission information with the defined theme that specifies types of access to the defined theme that are allowed, and wherein the customizing of the theme includes modifying the

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permission information (column 29, lines 7-23, column 33, lines 33-53).

With regard to claim 198:

Burkey further discloses the defining of the theme includes associating security information with the defined theme, and wherein the customizing of the theme includes modifying the security information (column 29, lines 7-23, 24-40).

With regard to claim 199:

Burkey further discloses the defining of the theme includes specifying a relationship of the defined theme to other themes, and wherein the customizing of the theme includes modifying the specified relationship (column 30, lines 52-67, column 31, lines 1-48, column 32, lines 51-62).

With regard to claim 200:

Burkey further discloses the specified relationship is a category of persona (themes) (work, office and vacation) that is associated with the defined theme (column 31, lines 1-48).

With regard to claim 201:

Burkey further discloses the defining of the theme includes associating a theme layout with the defined theme that includes one or more indications of the indicated appropriate information for the defined theme, and wherein the customizing of the theme includes modifying the theme layout (column 30, lines 7-33).

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With regard to claim 202:

Burkey further discloses the defining of the persona (themes) includes generating a new context server module (e.g., server 1720) capable of generating context information (for example, news travel, email context information) for the represented contextual situation or of generating a new context client module (e.g., client 1740) capable of producing responses appropriate to the represented contextual situation (column 31, lines 1-28), and wherein the customizing of the theme includes modifying the new context server module or new context client module (column 31, lines 29-48, column 32, lines 4-26, 51-62, column 33, lines 33-53).

With regard to claim 203:

Independent claim 203 corresponds generally to independent claim 184 and recites similar features in storage medium form, and therefore is rejected under the same rationale

With regard to claim 204:

Independent claim 204 corresponds generally to independent claim 184 and recites similar features in a computing device form, and therefore is rejected under the same rationale.

Allowable Subject Matter

6. Claims 135-149 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter:

The prior art neither renders obvious nor anticipates the combination of claimed elements because the prior art fails to teach each element recited in applicant's claims. Applicant's claims recites "a method in a wearable computing device for customizing one or more obtained defined themes used to present information to users, ..." the preamble further includes elements which breaths life into the claim. The method recites, a plurality of steps including among other steps "determining that one of the available defined themes models the current contextual situation such that the received current value for each of the context attributes specified for that one theme matches one of the specified possible values associated with that context attributes."

Thus, prior art neither renders obvious nor anticipates the combination of claimed elements including the preamble as specified in claims 135-149.

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CONCLUSION


8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Tadesse Hailu, whose telephone number is (571) 273-4051. The Examiner can normally be reached on M-F from 10:00 - 630 ET. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, John Cabeca, can be reached at (571) 273-4048 Art Unit 2173.

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Tadesse Hailu

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September 29, 2004


RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173